(2)

Case No. 95-1891

Supreme Court, U.S.
FILED
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IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

MADISON ANDERSON,
Petitioner,

vs

MERLL JOHNSON
a/k/a Merle Dortch,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

SUPPLEMENTAL BRIEF

MADISON ANDERSON
In Pro Per
3831 Kendall
Detroit, MI

12 pp

SUPPLEMENTAL QUESTION PRESENTED FOR REVIEW

Was the Due Process Rights of the Petitioner Violated Irrevocably Resulting in Deprivation of Petitioner's Property Rights Where Personal Service Nor Substituted Service Was Ever Invoked According to the Court Rule(s).

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The Petitioner, Madison Anderson, respectfully submits his Supplemental Brief to his original Petition For Writ of Certiorari, wherein is contained one additional argument as follows:

ARGUMENT

The Due Process of the Petitioner Was Violated Irrevocably Resulting in Deprivation of Petitioner's Property Rights Where Personal Service Nor Substitute Service Was Ever Invoked According to the Court Rule, MCR 2.105 (A), (1), (2).

Under Court Rule MCR 2.105 (a) (1) (2), the rule governing service of process states:

"(A) Individuals. Process may be served on a resident or non-resident individual by,

(1) Delivering a summons and a copy of the complaint to the defendant personally; or

(2) Sending a summons and copy of the complaint by registered or certified mail..."

The process server in the person of Charles Baer affirms the above argument by his personal testimony that reflects his conscious decision to exercise a method of serving the Summons and Complaint contrary to MCR 2.105 (A). That avenue of thought may be further explored by giving Mr. Baer the benefit of the doubt

and assuming the person on Kendall, who steadfastly refused to open the door or accept the Summons and Complaint, miraculously changed his mind and decided to remove the documents from the door in full view of Mr. Baer. Point of fact is, when Mr. Baer left the documents taped to the common door of a multi-family building, he had no way of knowing who would remove them, or if he would see the person he was speaking with. He still concedes the person is unknown to him and can only be described as a black man, who removed the documents and took them inside. Mr. Baer obviously had every intent of leaving those papers taped to the door and informing Plaintiff/Appellee that they had been properly served.

Mr. Baer didn't need the courts to let him know this was improper service. He acknowledges his own apprehension regarding the propriety of this method of service when he testified that "I do recall the service, Sir, because it's the one and only service I made in this type of instance where somebody refused to open the door and I did leave the documents taped to the door." (Trans. P. 12, lines 4-7). He never did it before because, as a professional process server, he knew he could only tape documents to the door at the

discretion of the court as described in MCR 2.105 (I).

> (1) On a showing that service of process cannot be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the Defendant actual notice of the proceedings and an opportunity to be heard. (Emphasis added).
>
> (2) A request for an order under the rule must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to how the process cannot be served under this rule and must state the Defendant's address or last known address, or that no address of the Defendant is known. If the name or present address of the Defendant is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs.
>
> (3) Service of process may not be made under this subrule before entry of the court's order permitting it.

In this case, the Plaintiff/Appellee's attorney never petitioned the Court for an order for substituted service. It is apparent that the trial court erred and should have seriously questioned the act of taping a Summons and Complaint to the common door of a

multi-family dwelling and found it to be improper and not in accordance with the Court Rules.

Assuming a court could find that taping the documents to the door would be sufficient to give actual notice, Plaintiff/Appellee still failed to obtain a court order prior to using the method of service as required by MCR 1.205 (I) (3). To allow Plaintiff/ Appellee to use the method of service of process described supra, prior to obtaining a valid court order, as required, would only serve to encourage unscrupulous process servers to disregard MCR 2.105 (I), and particularly MCR 2.105 (I) (3).

Michigan case law is also not in accord with the events which relate to the way Defendant/Appellant was allegedly served. In Sechler vs. HanHoey, 83 Mich App 252; 255, 268 NW 2d 364 (1978), the Court discussed the purpose and guideline for GCR 1963, 105.8 which is most closely restated by MCR 2.105 (I). In this case the Court stated:

> "The purpose behind GCR 1963, 105.8 is the allow the judge, in the exercise of his discretion, to order service by substitute means if those means are reasonably calculated to provide actual

> notice to the defendant. The text of the rule establishes as a threshold requirement that service cannot be reasonably made in a manner provided for under the other rules. In State Board of Education vs. VanZellen, 1 Mich App 147,156'134 NW 2d 838 (1965), the court stated that, "It appears from the language of the court rule, that the discretion of the court is activated by a showing to the court that service of process cannot reasonably be made in the manner provided for under the rules."

Mr. Baer's testimony clearly establishes he did not seek an order from the Court and he made no attempt at meeting the threshold requirement. The Court is asked to note that Mr. Baer states he only made one attempt to serve the Summons and Complaint and that was at the Kendall location. (Trans. p. 11, lines 8-11). There was no indication that service of process could not reasonably be made in the manner provided under other rules.

Defendant/Appellant offers a possible explanation for Mr. Baer's haste to circumvent the court rules and prepare to designate his actions as personal service. On page 7, lines 9-20 of the transcript, he states that he received Twenty-Five Dollars ($25.00) for each summons and complaint served, whether he does it on

the first attempt or several attempts later. Obviously, to make the fewer number of attempts is more advantageous for Mr. Baer.

Pointedly, the Petitioner is possessed of the knowledge that MCR 2.105 (J) provides a remedy to the question of improper service when the party is noticed or informed of the actions timely.

In this connection, a default judgment had been entered against the Petitioner and as earlier noted in previous argument(s) that monies were extracted from the Petitioner response to a subsequent scheduled hearing in this matter.

Here the fundamental point that needs stressing is that the Petitioner had not been placed on notice of the pending paternity action.

Thus, the devastating consequence is that the Petitioner has been subjected to property deprivation arising from the default judgment of paternity all such property deprivation has taken place and continues until this day without the Petitioner having ever had an opportunity to challenge or defend himself.

In short, the Petitioner's due process rights have been violated irrevocably.

Respectfully submitted,

MADISON ANDERSON, In Pro Per

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CERTIFICATE OF SERVICE

Madison Anderson certifies that on the _____ day of September, 1996, he served copies of Supplemental Brief of Petition for Writ of Certiorari to the Michigan Supreme Court, upon Counsel for the Respondent: Office of the Friend of the Court, Paternity Prosecution Unit, Suite 619 Penobscot Building, 645 Griswold Street, Detroit, Michigan 48226, by placing same in an envelope in a U.S. mail receptacle with first-class postage fully prepaid thereon.

I declare that the above statements are true to the best of my information, knowledge, and belief; MCR 2.114 (A) (2) (b).

MADISON ANDERSON